IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1362 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PUNJAB TYRE HOUSE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1362 of 2002

MR BR GUPTA for Petitioner No. 1-3

Mr V M Pancholi, APP for Respondent No. 1

MR PC KAVINA for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/04/2002

ORAL JUDGEMENT

This is an application filed under section 482 of the Code of Criminal Procedure, 1973 for quashing

criminal case No.96/2002 filed by respondent no.2, herein, against the petitioners for offences punishable under section 138 of the Negotiable Instrument Act, 1881 as well as for the offences punishable under section 420, and 406 of IPC before the learned Metropolitan Magistrate, Court No.15, Ahmedabad City. The facts of the case of the said criminal case No.96/2002 may be briefly stated as follows:

2. That, petitioner No.1 is a registered partnership firm and petitioners no.2 and 3 are the partners thereof. It is alleged in the complaint before the trial court that petitioners no.2 and 3 herein together and with the help of each other are running business in the name and style of petitioner no.1. It is also alleged in the complaint that petitioners no.2 and 3 are carrying on business of sale of tyres and allied products from their business premises as mentioned in the complaint. It is further alleged in the complaint that petitioners no.2 and 3 approached the Ahmedabad branch office of respondent no.2 sometime in July, 1999 and presented themselves as sellers of products such as those of the complainant and asked that the complainant should sell its products through their business. Ultimately, a contract was entered into and sale was made. It is further alleged in the complaint that despite the delivery of goods, payment was not made regularly. It is alleged that at the first instance, payment was made but thereafter payments were not made but cheques were issued by petitioner No.1 and signed by the second petitioner. However, the cheques were dishonoured when presented to the bank concerned. Therefore, there is allegation that the petitioners herein have committed an offence punishable under section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') It is further alleged that the present petitioners have adopted a modus operandi designed and crafted to cheat the complainant and the entire chain of events shows that the accused did not have either resources or intention to make the payment to the complainant, even though under the terms and conditions, issuance of cheques against delivery of goods was agreed to by the accused. It is further alleged in the complaint that it was the intention of the accused to cheat the complainant and induce the complainant to part with the valuable goods. It is, therefore, contended that by such inducement, the contesting respondents have delivered the goods and thereafter, the cheques issued were not honoured and, therefore, payments could not be realised and, therefore, according to the case of the original complainant, the complainant was cheated by the aforesaid action on the

part of the petitioners. Therefore, offence punishable under section 420 of IPC has also been alleged against the petitioners.

2. On receipt of the aforesaid complaint, the learned Magistrate recorded verification of the complainant on oath and thereafter, he directed that the complaint be registered and process be issued for offences punishable under section 138 of the Act and for the offence punishable under section 420 read with section 114 of IPC. Feeling aggrieved by the said order of the learned Magistrate, the applicants herein have preferred this application before this Court. It has been mainly contended here that since several cheques said to have been issued by the petitioners, the trial court could not have issued process for more than three offences as indicated in section 219 of the said Code. It is further contended that the cheques were invalid as they were presented after the due date. It is also contended that there was some overwriting with respect to the dates for the issue of cheques and, therefore, such cheques could not have been considered by the trial court for any purpose. It is further contended that petitioners no.2 and 3 were not responsible and liable to answer the complaint as there was no allegation in the complaint that they were responsible and liable for the alleged offence even on the date of which the offence was allegedly committed. It is further contended that the amount stated in the cheques were not due on the date of the cheques and, therefore, no offence can be said to have been made out against the petitioners. It is, therefore, contended that the learned Magistrate has committed grave error in issuing process after registering the complaint against the petitioners. That therefore, since no offence has been made out, the present application may be allowed and the aforesaid criminal case filed against the petitioners be quashed and se aside.

3. On receipt of the aforesaid application, notice was issued and in response to the service of notice, learned APP, Mr V M Pancholi appears for the State of Gujarat-respondent no.1 and Mr P C Kavina, learned Advocate appears for respondent no.2. I have heard the learned Advocates for the parties and have perused the papers. In fact, learned Advocates for the parties have taken me through the complaint as well as the memo of the application submitted by the applicant herein. It is first contended by the learned Advocate for the applicants that under section 219 of the Code, the trial court could have dealt with only three offences if

committed within a span of one year and if the offences are more than three, then in that event, for the remaining offences, the court could not take cognizance of such offences. For this purpose, he has taken me through the provisions made in section 219 of the Code which reads as under:

"Three offences of same kind within year may be charged together - (1) when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the IPC or of any special or local law:

Provided that, for the purposes of this section, an offence punishable under section 379 of the IPC shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the Code, and that an offence punishable under any section of the said code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence."

While dealing with the provisions of section 219 of the Code, it would also be relevant to consider the provisions made in section 218 of the said Code, wherein it has been mentioned that when the accused person, by application in writing, so desires and the Magistrate is of the opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person. This is not a stage at which section 218 of the Code can be brought into operation. However, the fact remains that it is not the intention of the legislature that more than one offence cannot be tried together or that more than three offences cannot be tried together. It is true that the provision of section 218 of the Code is subject to the consent of the accused person. It is also based on the fact that the Magistrate has to find that no prejudice is likely to be caused to the accused, if he is tried for many offence at a time.

4. So far section 219 is concerned, it is true that

it has been mentioned in it that when a person is accused of more offences than one of the same kind committed within the span of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three. At the same time, it is also relevant to refer to provisions of section 220 of the Code wherein it has been stated that if one series of acts so connected together as to form the same transaction, and if more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. It has been argued by the learned Advocate for the petitioners that different bills have been issued, different cheques have been issued. cheques have been issued on different dates and, therefore, it cannot be said that one offence has been committed. On the other hand, it has been argued on behalf of the contesting respondent, that, in fact, it is a series of one transaction and as and when the goods were required, they were supplied by the respondents. It is a matter of the same transaction and the dispute is between the same parties and therefore, it would not be open to this court to quash the complaint on the basis of the aforesaid contention raised by the petitioners. This requires consideration and hence the complaint cannot be quashed on this count.

5. It is also required to be considered that the requirement of section 219 of the Code for trying three offences in one case within a span of one year is restricted to the actual trial and not to the filing of complaint or FIR. Even if a FIR or a complaint has been filed consisting of more than three offences in one year, then also FIR can be registered. It can be investigated also. However, if it is found that there is some defect touching the provisions made in section 219, then the Investigating Officer can divide the cases in accordance with the provisions made in Section 219 of the Code. If he does not do it and submits one composite charge sheet for more than three offences, then the Court may, separate the trial to be in conformity with the provisions made in section 219 of the Code. In the alternative, even the Investigating Police Officer may also file supplementary charge sheet so as to be in conformity with section 219 of the Code. Therefore, the restrictions placed by section 219 of the Code may not be an obstruction at the stage of filing of FIR or a complaint. Therefore, even from this angle, the complaint filed by the contesting respondent cannot be thrown away on the ground of restriction of section 219 of the Code.

6. It is next contended by the learned Advocate for the petitioner, that the cheques were invalid inasmuch as the period of presentation had expired and, therefore, there were some overwriting on the cheques with respect to the date of issue of those cheques. Learned Advocate for the petitioner has drawn my attention to a cheque at page no.52 which shows that there is one date i.e. 7.12.2000 which has been struck off and rubber stamp showing the date of 29.11.2001 has been affixed. It is the argument of the learned Advocate for the petitioner that this type of over writing in the date of cheque shows that the dates are not genuine and the rubber stamp has been placed on those dates by the contesting respondent with a view to show that the presentation of the cheque was within limitation. On this aspect of the case, it would be necessary to refer to the averments made in the complaint. In para 4 of the complaint at page 16 it has been alleged by the contesting respondent that some of the cheques issued by the accused are bearing two dates. It is further mentioned therein that these dates were put on the cheques by the accused on the basis of concession granted by the complainant to the accused inasmuch as the accused had requested the complainant not to deposit the cheques within the validity period as per the earlier date. It is further stated in the said para that all these cheques, which were revalidated, bear new dates. Any way there is an allegation on the part of the petitioners that there was over writing in the cheques with respect to the dates of the cheque. On the other hand, the contesting respondent has submitted that this change was made by the petitioners while issuing the cheques. This shows that there is again a disputed question of fact which cannot be entered into in the proceeding under Section 482 of the Code. In the facts and circumstances of the case, Shri Ishar Alloy Steels Ltd. Vs. Jayswals Neco Ltd., reported in (2001) 3 SCC 609 will not help the petitioner.

7. It is then contended by the learned Advocate for the petitioners that there is no mention in the complaint that the petitioners herein were and are the persons responsible for the offences said to have been committed on the date on which the offences were committed. It is his argument that the date of issue of the cheque would not be the date of commission of offence. It is his argument that the date of commission of offence would be the date on which the cheques have been dishonoured, the date on which the notices were issued and the date on which the period of notice expired. It is also his

argument that there is no mention in the complaint that the present petitioners were responsible for the business of the firm i.e. petitioner no.1 on the date on which the offence can be said to have been committed. Again on this point, the original complainant has stated in the complaint in para 1 that petitioners no.2 and 3 with the help of each other in the name and style of petitioner no.1. are running the partnership firm. When the word 'are' is indicated in para 1 of the complaint, it would mean that even on the date of the complaint, these two petitioners were allegedly running the business in the name of petitioner no.1. It is also alleged in para 1 of the complaint that petitioners and 2 and 3 are carrying on business of sale of tyres as mentioned above. In para 2 of the complaint, it is alleged that petitioners no.2 and 3 had approached the Ahmedabad branch of the complainant in July, 1999 and consequent upon the said approach the contract was effected between the parties. This shows that petitioners no.2 and 3 were actively participating in the business of petitioner no.1, the firm of which there are partners. It is found from the pleadings and arguments that petitioners no.2 and 3 are the only partners in petitioner no.1 firm. It is also a matter of record that petitioner no.2 has signed the cheque which shows that on the date of issue of the cheque he was partner of the firm and he was actively and effectively participating in the business of the said firm.

8. In para 4 of the complaint again it has been alleged that the new dates have been put on the cheques by the accused on the basis of concession granted by the complainant to the accused. This would mean that even when the new dates were placed, petitioners no.2 and 3 were effectively and actively participating in the business of petitioner no.1. This can be inferred from this allegation also. In para 4 again it has been alleged at page 17 that on petitioners no.2 and 3 assuring the complainant that all the cheques would be honoured, the complainant deposited the cheques with the bank and they were not honoured and, therefore, even when the cheques were placed and presented to the bank the assurance was given by petitioners no.2 and 3, according to the allegations made in the complaint which again indicates that petitioners no.2 and 3 both were actively and effectively participating in the business of petitioner no.1 as per the allegations of the respondent. There is no dispute that petitioners no.2 and 3 have yet not resigned from the firm and there is no allegation that these two petitioners were not dealing with the partnership business. These facts are required to be

taken into consideration while dealing with the decision referred to by the learned Advocate for the petitioner on this aspect of the case. The first decision referred to by the learned advocate for the petitioner is in the case of Alka N Shah v. State of Gujarat, reported in 2000(3) GLH 468. There it has been observed by this court that it is obvious that the offence could only be committed on the presentation of the cheques on due dates, on the dishonour of the cheques, and the consequential notice being issued under section 138 of the said Act. There is no dispute with respect to the said observations made by this court as aforesaid. The facts of that case were quite different. That can be drawn from para 4 of the said decision wherein it has been observed that even according to the complainant, the offence was committed by the company and accused no.1 was liable on account of her position as M.D. of the company. On a plain reading of section 141 of the Act, it becomes obvious that every person "at the time the offence was committed, was in charge of and was responsible to the company" shall be deemed to be guilty of the offence. It is also observed that on the facts and circumstances of the case, it was an admitted position that the offence was committed when the cheques were dishonoured, and when a notice of dishonour was issued under section 138 of the Act. It is further observed that this occurred in November and December of 1999 whereas the accused in that case had resigned both as Director and Managing Director of the Company as early as on 27th January 1999. It was therefore, found that this former Managing Director of the company could not be said to have committed the offence on the date on which the offence could be said to have been committed.

9. With respect to the facts of the case on hand, it is clear that the second petitioner, who has signed the cheques, was partner of the first petitioner on the date, on which the cheques were issued, he was again the partner on the dates of which the cheques were dishonoured. He was also partner when the notices were issued and even on the date of the complaint, he has continued to be the partner of the said firm. In that view of the matter, there is no case of retirement from the partnership and, therefore, the aforesaid decision cannot be made applicable to the facts of the present case.

10. It has been contended that it has not been mentioned in so many words that petitioners no.2 and 3 were partners and responsible for business of the firm on the date on which the offence was committed. When it has

been specifically alleged in the complaint that the petitioners were and are responsible for the said business, it would mean that they were responsible in the past and even on the date of the offence as well as on the date of the complaint they had continued to be responsible for the said purpose. Therefore, we cannot pick and choose a particular word in the complaint. It cannot be insisted that the complainant should use a particular word in the complaint for satisfying the requirement of sections 138 and 141 of the Act. Simply because it has not been mentioned that petitioners no.2 and 3 were responsible and liable on the date of the offence, then in that event, it cannot be said that the requirement of sections 138 and 141 of the Act have not been complied with. We have to go by the spirit of the complaint and not by any specific word thereof.

10.1. The second decision of this Court in the case of Gopishankar S Vaid v. State of Gujarat, reported in 2001(1) GLR 267 was also shown. There it was observed that when a company had nominated a person under section 17(2) to be the one responsible for the conduct of the business of the company, then the other directors or officers cannot be prosecuted unless it is alleged that the offence is committed with the consent or connivance of such other director or officer. This will again not be applicable to the facts of the present case since petitioner no.1 is a partnership firm itself and it is not explained as to why a person who has signed the cheque is not responsible for the offence in question. Even today respondents No.2 and 3 have not resigned as partners. Therefore the aforesaid decision again will not help the petitioners on the facts of the case before us. It is more so when petitioners no.2 and 3 both have allegedly participated in the business of the firm and in the negotiation for the contract in question.

10.2. Another contention raised by the learned Advocate for the petitioner is with respect to the notice issued by the contesting respondent to the petitioners. It has been argued at length that the contesting respondent has produced postal acknowledgements at page 51 to this application. It is his argument that this postal acknowledgement did not bear stamp of the post office. They do not show the date on which the notices were actually presented to the post office. They do not show the date on which the post office had delivered the post to the addressee and there is no mention as to the date on which the notices were served. It is not the contention of the petitioners that they did not receive the notice at all. On the contrary, the petitioners have

stated in the petition that they have received the notices and they have sent reply to the said notices also. Therefore, the fact of receipt of notice cannot be disputed by the petitioners for the purpose of this application before this court. At the same time, it requires to be considered that the aforesaid copies of postal acknowledgements bear some signatures of the addressee and it will be open to the parties to produce evidence before the trial court to prove the said postal acknowledgements. If the dates are not there on the postal acknowledgement, it would be open to the parties to bring evidence from postal department to prove or disprove their rival case. However, it cannot be said here that the notices were not issued at all. With respect to the dates also, the contesting respondents have stated that probably the notices have been served on 22.12.2001. This will again be a question of fact which can be dealt with by the trial court as and when the trial commences and as and when the evidence is produced by the parties. This type of disputed question of fact cannot be entertained while exercising inherent jurisdiction under section 482 of the Code. The fact remains that there is an allegation that the notice has probably been served on the petitioners on 22.12.2001 and, therefore, in view of the said statement, it cannot be said that the complaint is ex-facie barred by limitation as contemplated in the Negotiable Instruments Act. 1881.

11. It has also been contended that the cheques stood only as collateral security for the purpose of contract. For this purpose, the petitioners have relied upon a decision rendered in the case of Shanku Concretes Pvt. Ltd. v. State of Gujarat, reported in 2000(2) GLR, 1705. There it was observed that the complainant had advanced money to the accused Company repayable after six months. Post dated cheques were given to the complainant which were bounced. There was agreement between the parties which indicate that the cheques were issued as collateral security for due performance of contract. The payment was to be made on some future date and there was no debt or liability on the date of delivery of cheques. Therefore it was found that the transaction was of civil nature and a complaint under section 138 of the Act was required to be quashed. Again the facts before us are quite different. Delivery of goods was effected and cheques were issued, as per the case of the contesting respondent, to fulfil the obligation of the petitioners to make payment of the value of the goods received by the petitioners. Therefore, when the goods were delivered and cheques were issued, then prima facie, it cannot be

said that it was simply a question of collateral security and there was no existence of debt or liability against the petitioner on the date on which the cheques were issued. On this aspect of the case, it would be worthwhile to refer to a decision in the case of A V Murthy v. A B Nagabasavanna, (2002) 2 SCC 642. There the Supreme Court has observed that the revisional court had erred in quashing a complaint in proceeding on the ground that debt or liability was barred by limitation. Here also it would be again a question of fact as to whether on the date of issuance of cheque, there was existence of debt or liability on the part of the petitioner to pay the amount of cheque to the respondent. The fact remains that the goods were delivered and cheques were issued. This Court may not go into minute discussion as to whether or not on a particular date of issue of cheques, the goods were delivered, or even after the delivery of the goods the amount was actually due to the respondent by the petitioners on that date.

12. In the case of M. M. T. C. Ltd. v. Medchl Chemicals & Ors., reported in 2002 SC (Cri.) 121 again it was a matter of an offence under section 138 of the Act. There the complaint was filed in the name of the company by its employee without necessary authorisation. It was observed that such a complaint was nonetheless maintainable. Want of such authorisation can be rectified even at a subsequent stage. This shows that the courts are not required to go into technical details at the initial stage till the matter goes for evidence.

12.1. In the case of S.A. Nanjundeswara v. M.S. Varlak Agrotech Pvt.Ltd., reported in AIR 2002 SC 477, it has been observed that if the statements taken on the face value do not make out any offence, criminal proceedings can be quashed and it is not proper for the High Court to sift the material on record. Almost similar view was taken in the case of State of Karnataka v. M Devendrappa & Anr., reported in AIR 2002 SC 671.

13. Again it has been argued that the trial court could not have taken cognizance of the offence punishable under section 420 of IPC. On this, we can refer to the averments made in the complaint. In para 7 of the complaint at page 18, the contesting respondent has alleged that the accused have adopted the modus operandi designed and crafted to cheat the complainant and the entire chain of events shows that the accused did not have either resources of intention to make the payment to the complainant, even though the terms and conditions of the contract provide for issue of cheques against

delivery of goods. It is further alleged in the complaint that it was the intention of the accused to cheat the complainant and induce the complainant to part with the valuable goods. The argument of the learned Advocate for the petitioners is that payments were made regularly at the first instance and thereafter the petitioners could not make payment on account of certain circumstances. At this stage, learned Advocate for the contesting respondent has made it clear that till the payment was made there was no dishonest intention but when the cheques were issued and when they were revalidated, there was dishonest intention on the part of the petitioners to induce the contesting respondent to part with the goods and, therefore, the offence of cheating has been made out. Then again, this will be a question of fact. Simply because the process has been issued for some offences, it would not be necessary for the complainant to restrict evidence with respect to the offences for which process has been issued. At the same time, even when the process is issued for some offence and a different offence, alleged in the complaint, is made out, it would be even open to the trial court to frame charge with respect to the offences which are prima facie shown by the complainant in his complaint and in respect of which evidence has been produced by him at the stage of framing of charge and, therefore, at this stage, it would be too early to say that no offence of cheating has been made out.

13.1. In the case of Union of India v. Banwari Lal Agarwal, reported in 1998 (4) Crimes 75 (SC), the matter related to quashing and jurisdiction of the Court. The said case was decided on certain legal and factual aspects under the Income Tax Act, 1961. Therefore, it is not found to be relevant on the facts of the case before us.

13.2. The case of Municipal Corporation of Delhi v. Ram Kishan Rohtagi, reported in AIR 1983 SC 67, relates to the exercise of powers under section 482 of the Code read with section 397(2) of the said Code. It is required to be considered that despite the provisions of sub-section (2) of section 397, the powers of section 482 of the Code can be exercised but they are to be exercised sparingly and in a rare case, for quashing the proceedings. It is very clear that such power can be exercised only when a complaint/FIR does not make out even prima facie case for commission of offence. Again when in view of the allegation against petitioners no.2 and 3 referred to hereinabove has been made in the complaint itself, it cannot be said that there is no

allegation of their involvement in the offence in question in complaint and, therefore, the observations made in the said decision will not apply on the facts of the case before us.

13.3. In the case of State of Haryana v. Brijlal Mittal & Ors., reported in (1998) 5 SCC 343, it has been laid down that simply because a person is a Director of a Company he does not vicariously become liable for offence committed by the company. Here in the present case, it is not a case in the complaint that the partners of the firm are liable for the offence committed by the firm, simply because they are partners. It cannot be said that no offence has been constituted by or made out against petitioners no.2 and 3 also, since their involvement has been specifically alleged in the complaint in so many words.

13.4. In the case of Harsukhbhai Lakshmanbhai v. State of Gujarat, reported in 2001 (3) GLR 2271, the facts were little similar. The cheque was signed by one of the partners. The other partner was shown to be actively involved in the transaction with the complainant. It is, therefore, observed that such other partner was liable to be prosecuted for return of the cheque. In the present case also the involvement of petitioner no.2 is there because of the fact that he has signed the cheque. So far as petitioner no.3 is concerned, his involvement is also shown as said above. Therefore, the original complainant has a right to produce evidence to prove the said allegations. It, therefore, cannot be said that petitioner no.2 and 3 should be exonerated by quashing the complaint against them.

13.5. In the case of Dependra O Choksi v. Dipak Chimanlal Patel, reported in 1997 (2) GLR 1191, it has been observed that it is the duty of the Magistrate to screen and examine the allegation and if prima facie, the offence of cheating is made out, then to issue the process for an offence punishable under section 420 of IPC. In the present case, we find that the original complainant has made allegation about the offence of cheating. In the present case, it is found that cheques were issued at the first instance. According to the case of the original complainant, he was requested not to present the cheques. Therefore, the cheques were not presented and thereafter, the cheques were revalidated and, therefore, they were presented before the bank at the relevant point of time and they were returned. This shows that at the time when cheques were revalidated, there was trust and confidence allegedly given by the

petitioners to the original complainant that the cheques would be honoured, and therefore, the respondent supplied goods to the petitioners. However, they were not honoured at that time also. According to the case of the original complainant, this amounts to an offence of cheating. Ultimately, this would be a matter of evidence and appreciation thereof and if the original complainant fails to prove the ingredients of cheating, the petitioners may not be convicted. But that does not mean that the original complainant should be deprived of his right to produce evidence with respect to the offence of cheating.

13.6. In the case of Hridaya Ranjan Pd. Verma v. State of Bihar, reported in 2000 AIR SCW 2077, the complainant had alleged that there was an agreement of sale of property entered into by the accused on behalf of himself and his brothers with the complainant. A complaint was filed for cheating. Allegation made was that the accused did not disclose that one of his brother, had filed partition suit which was pending. It was not alleged that the information was not disclosed intentionally by the accused in order to make the complainant part with the property. Dishonest intention of accused at the beginning of negotiation was not made out by averments in the complaint. It was found that the High Court was not justified in declining to quash criminal proceeding against the accused.

14. In the present case, I find that some allegations have been made against the present petitioners with respect to initial fraudulent intention on the part of the petitioners. It has been alleged that initially the goods were supplied and payments were made. However, subsequently despite the supply of goods, the payments were made. This shows that by making payment at the first instance, the petitioners tried to create a trust and confidence amounting to the matter of assurance that they would go on paying the amount being the value of the goods supplied to them. By this conduct, according to the case of the contesting respondent, the petitioners had induced the contesting respondent to part with the property. It is also submitted by the learned Advocate for the respondent that had there been a different conduct on the part of the petitioner, the contesting respondent would not have parted with the property. Therefore, it cannot be said that offence of cheating has not been made out in the complaint, prima facie.

15. In above view of the matter, it cannot be said that no offence has been made out prima facie. When the

offence, under section 138 of the Act and under section 420 of IPC have been prima facie made out, then in that event, it would not be just or proper or legal to quash the complaint at the initial stage. The contesting respondent is a resident of Ahmedabad. The cheques were issued to the said respondent. It is alleged that in the past cheques were received at Ahmedabad and payments were made at Ahmedabad. This shows that actually, payment of goods delivered was made to the contesting respondent at Ahmedabad and, therefore, some cause of action has arisen at Ahmedabad and, therefore, prima facie, the Court at Ahmedabad has jurisdiction to entertain the complaint of the contesting respondent. Moreover, a complaint disclosing some offences prima facie, cannot legally be quashed on the ground of jurisdiction.

16. Even otherwise, on recording of evidence or otherwise, if the trial Court feels and finds that the cause of action does not fall within its jurisdiction, then the appropriate order can be passed by the court concerned but the complaint cannot be thrown away at this stage on this count.

17. It is also contended that the payment was required to be made within 45 days and, therefore, it was not a case of debt and liability existing on the dates of the cheques. The argument is not well founded. There is a clear allegation that the cheques were issued on delivery of goods and they were dishonoured. This shows that when the cheques issued on different dates, debt was there and it cannot be said that the cheques were not issued against existing debt. Again this is a question of fact which can be decided at the time of evidence. In above view of the matter, it cannot be said that the complaint does not disclose, prima facie, the offence against the petitioners. In that view of the matter, the complaint cannot be dismissed or quashed by this Court at this stage in exercise of inherent jurisdiction under Section 482 of the Code. This shows that this is a meritless application.

18. For the foregoing reasons, this application deserves to be dismissed. It is required to be observed here that huge amount of the contesting respondent has been held up on technicalities of law. Arguments have also occupied considerable time. the application is totally meritless. It would, therefore, be proper to saddle the present petitioners with cost which can be utilised for some other benefits also. In above view of the matter, the present application is ordered to be dismissed. Notice discharged. The petitioners herein

shall deposit cost of Rs.5000/- (Rs. Five thousand only) in this Court and on such deposit, the said amount shall be transmitted to the Gujarat High Court Bar Association Library fund.

19.4.2002 [D P Buch, J.]
msp